IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4987 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH MANHARLAL NATHWANI
Versus
PUSHPABEN DURLABHJI NATHWANI & Anr

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Appearance :
MR PJ KANABAR for Appellant No.1,
None for Respondents No. 1, 7,9 - 12.
NOTICE SERVED for Respondents No. 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7 - 2.
MR SANJAY M AMIN for Respondent No. 3,
NOTICE UNSERVED for Respondents No. : 6, 8.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 19/10/2005

ORAL JUDGMENT

1.This First Appeal is preferred against the judgment and decree delivered by 4th Joint Civil Judge (S.D.), Junagadh on 6th May, 1998 in Special Civil Suit No.59/1988 by the original plaintiff against the original defendants who are represented as respondents herein.

2.The original plaintiff valued the suit at Rs.40,000/- and Court Fees is accordingly affixed.

3.With coming into force the Gujarat Civil Courts Act, 2005 on 9th May, 2005, appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, would lie to the Court of District Judge of the District when the amount or value of the subject matter of the original suit or proceedings is fixed less than Rs.5 Lakhs or such other sum as the High Court may,

from time to time, specify according to Section 15(1)(a) of the said Act.

4.Vide Sub-Section (4) of Section 15 of the Gujarat Civil Courts Act, 2005, the provisions of the Act would apply to all decrees and orders made after the appointed date irrespective of the fact that when the suits or proceedings in which they are made were instituted before or after the appointed date. Further vide Sub-Section (3) of Section 30 of the said Act, it is provided that notwithstanding anything contained in Sub-Section (1) of Section 30 or any other provisions of the said Act or in the enactment repealed by Sub-Section (1) or in any other provisions having the force of law, such suits, appeals and proceedings pending before any Court, which under the said Act have to be instituted or connected in another Court, shall, on the appointed day, stand transferred to such other Court and shall be continued and

disposed of by such other Court in accordance with law as if such suit and proceedings had been instituted or commenced in such other Court under the said Act.

5.In the similar circumstances, in the matter of JAYRANCHHOD PIYAT SAHAKARI MANDALI LTD Vs. GUJARAT ELECTRICITY BOARD, (First Appeal No.2820 of 2004), this Court [Coram: A.L.Dave,J.] vide order dated 12th July, 2005 took a view that by virtue of Sub-Section (4) of Section 30 of the said Act, the effect of the provision was that an appeal pending before this Court, subject matter of which was valued at less than Rs.5 lakhs stands transferred to District Court if appeal had arisen out of the judgment and decree of a Senior Civil Judge. The Court also discussed the effect of Sub-Section (4) of Section 15 of the said Act, in para-5.1 of the said order. Thereafter, many of such appeals were transferred by this Court to appropriate Court.

6.Undoubtedly, in the present appeal, the suit is valued at less than Rs.5 lakhs and the appeal has arisen from the judgment and decree of a Senior Civil Judge.

7.In this view of the matter, this First Appeal along with Civil Application No.10233/2004 and Civil Application No.12022/2001 all the three stand transferred to concerned Court of District Judge for disposal in accordance with law. It is necessary to clarify at this juncture that Civil Application No.12002/2001 is preferred by the appellant for taking action in accordance with Rule 2A of Order-39 of Civil Procedure Code for the breach of the injunction by this Court, now when since this First Appeal is transferred, according to law, to concern District Court, this Civil Application No.12002/2001 shall be dealt with by the concerned District Court as such empowerment is in embodied in the provisions of Rule 2A of Order-39 of Civil Procedure Code that the

action can be taken under such rule by the Court granting the injunction or making the order, or any Court to which the suit or proceedings is transferred. Therefore, Civil Application No.12002/2001 to be dealt with by the concerned District Judge, as if, the order of injunction was granted by that Court. The Registry of this Court shall take necessary steps immediately for transfer of this appeal along with Civil Application NO.10233/2004 and Civil Application No.12002/2001 as well as Record & Proceedings of the Trial Court and all the papers connected with this First Appeal, if lying before this Court. So far as this Court is concerned, this First Appeal as well as Civil Application No.10233/2004 and Civil Application No.12002/2001 all the three stand disposed of.

[J. R. VORA,J.]

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